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**From:** Kaiser, Sven-Erik [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=AC78D3704BA94EDBBD0DA970921271FF-SKAISER]  
**Sent:** 4/20/2016 10:07:03 PM  
**To:** 'Black, Jonathan (Tom Udall)' [Jonathan\_Black@tomudall.senate.gov]; Zipkin, Adam (Booker) [Adam\_Zipkin@booker.senate.gov]  
**Subject:** Sen. Udall TSCA TA Request on Voluntary non-animal testing

Jonathan – got it – checking. Thanks,  
Sven

Sven-Erik Kaiser  
U.S. EPA  
Office of Congressional and Intergovernmental Relations  
1200 Pennsylvania Ave., NW (1305A)  
Washington, DC 20460  
202-566-2753

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**From:** Black, Jonathan (Tom Udall) [mailto:Jonathan\_Black@tomudall.senate.gov]  
**Sent:** Wednesday, April 20, 2016 6:06 PM  
**To:** Zipkin, Adam (Booker) <Adam\_Zipkin@booker.senate.gov>; Kaiser, Sven-Erik <Kaiser.Sven-Erik@epa.gov>  
**Subject:** Voluntary non-animal testing

Sven, Adam with Sen Booker will elaborate, but there has been a concern raised about the Senate animal testing language that it will lead to EPA getting less information.

Does EPA have a concern that voluntary tests look to non-animal testing first will lead to less information getting to EPA?

Sent from my BlackBerry 10 smartphone on the Verizon Wireless 4G LTE network.

Message

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**From:** Kaiser, Sven-Erik [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=AC78D3704BA94EDBBD0DA970921271FF-SKAISER]  
**Sent:** 3/21/2016 9:45:28 PM  
**To:** 'Freedhoff, Michal (Markey)' [Michal\_Freedhoff@markey.senate.gov]  
**Subject:** Sen. Markey TSCA TA Request on 6(a) rules

Michal – we're close on this one. We got a similar request for options from Jonathan – ok to send him the TA with cost effectiveness options too? Separately we'll also update the chart and send that just to you. Ok?  
Thanks,  
Sven

Sven-Erik Kaiser  
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Office of Congressional and Intergovernmental Relations  
1200 Pennsylvania Ave., NW (1305A)  
Washington, DC 20460  
202-566-2753

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**From:** Freedhoff, Michal (Markey) [mailto:Michal\_Freedhoff@markey.senate.gov]  
**Sent:** Friday, March 18, 2016 3:49 PM  
**To:** Kaiser, Sven-Erik <Kaiser.Sven-Erik@epa.gov>  
**Subject:** Another TA request on 6(a) rules

Sven

Thanks for the table of alternatives on cost considerations in rulemaking. There was an interest in discussion today in seeing whether there is a way to flip the presumption of the House language in a way that said:

- epa identify remedies that address the unreasonable risk
- from those remedies, then somehow consider costs, whether by using the word cost-effective or some other word.

Can you help w some options (1 or more, however many occur to you), with eye to putting them into that chart? Ideally, I'd like options that fall closer to the Senate side rankings on both analytic burden and litigation risk but which helps the House feel that EPA will not choose the super-expensive unnecessary remedy.

Thanks  
M

Michal Ilana Freedhoff, Ph.D.  
Director of Oversight and Investigations  
Office of Senator Edward J. Markey (D-MA)

Message

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**From:** Kaiser, Sven-Erik [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=AC78D3704BA94EDBBD0DA970921271FF-SKAISER]  
**Sent:** 1/28/2016 10:27:29 PM  
**To:** Freedhoff, Michal (Markey) [Michal\_Freedhoff@markey.senate.gov]  
**Subject:** Sen. Markey TSCA TA request - definition of processor

Michal- got it. I'll get it to folks for a response. Thanks,  
Sven

On Jan 28, 2016, at 3:09 PM, "Freedhoff, Michal (Markey)" <Michal\_Freedhoff@markey.senate.gov> wrote:

Hi Sven

I have a couple questions about the definition of process/processor that have been raised by stakeholders.

- 1) <!--[if !supportLists]--><!--[endif]-->First, there is a question about whether EPA could treat someone who took 10 gallon containers of a chemical substance and transferred the substance into smaller containers for sale as a processor? My read of the current statute is that YES, 10(A) would seem to allow this. Is that EPA's read as well and is there regulatory text that may further elaborate on the plain reading?
- 2) <!--[if !supportLists]--><!--[endif]-->Second, what about companies who assemble things – ie install steering wheels in cars, or put furniture together? Could THEY be considered processors? My read is that 10(B) would NOT allow this, because if the chemical substance was already incorporated into the article, as it would be in the examples I used, (B) would make no sense in a reading that allowed these types of people to be treated as processors. Again, am I wrong on this, and is there any further regulatory or other elaboration on this point anywhere?

Thanks  
michal

(10) The term “process” means the preparation of a chemical substance or mixture, after its manufacture, for distribution in commerce—

(A) in the same form or physical state as, or in a different form or physical state from, that in which it was received by the person so preparing such substance or mixture, or

(B) as part of an article containing the chemical substance or mixture.

(11) The term “processor” means any person who processes a chemical substance or mixture.

Michal Ilana Freedhoff, Ph.D.  
Director of Oversight & Investigations  
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255 Dirksen Senate Office Building  
Washington, DC 20510  
202-224-2742

Connect with Senator Markey

<image001.png><image002.png><image003.png><image004.jpg>

Message

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**From:** Kaiser, Sven-Erik [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=AC78D3704BA94EDBBD0DA970921271FF-SKAISER]  
**Sent:** 4/3/2016 9:39:45 PM  
**To:** Freedhoff, Michal (Markey) [Michal\_Freedhoff@markey.senate.gov]  
**CC:** Black, Jonathan (Tom Udall) [Jonathan\_Black@tomudall.senate.gov]; Deveny, Adrian (Merkley) [Adrian\_Deveny@merkley.senate.gov]  
**Subject:** Re: Sen. Markey TSCA TA additional request on PFOA SNUR

Michal,  
This responds to the additional TA request on PFOA SNUR.

EPA believes the answer is no to both questions. Please let me know if any additional questions. Thanks,  
Sven

**Given the obvious and numerous manners in which EPA could find that there is a "reasonable potential for exposure to the chemical substance" through an article or category of articles, does EPA believe the article consideration language in senate 5 could impede it's development of this SNUR?**

EPA Response: No

**I understand the language provides a litigation pathway for those who might not like what you do, but does it provide a barrier to what you might actually be able to TRY to do?**

EPA Response: No

On Apr 3, 2016, at 2:46 PM, Freedhoff, Michal (Markey) <[Michal\\_Freedhoff@markey.senate.gov](mailto:Michal_Freedhoff@markey.senate.gov)> wrote:

I am assuming that if LCPFAC chemicals are similar to PFOA, that their uses in articles (even if there are no ongoing uses) might also be reasonably foreseen by epa to be similar - non-stick cookware, coatings for medical products, coatings for floors, clothing, paper boxes/bags used for food, etc. Given the obvious and numerous manners in which EPA could find that there is a "reasonable potential for exposure to the chemical substance" through an article or category of articles, does EPA believe the article consideration language in senate 5 could impede it's development of this SNUR? I understand the language provides a litigation pathway for those who might not like what you do, but does it provide a barrier to what you might actually be able to TRY to do?

Thx

Michal Ilana Freedhoff, Ph.D.  
Director of Oversight and Investigations  
Office of Senator Edward J. Markey (D-MA)

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**From:** Kaiser, Sven-Erik  
**Sent:** Sunday, April 3, 2016 2:19 PM  
**To:** Freedhoff, Michal (Markey); Black, Jonathan (Tom Udall); Deveny, Adrian (Merkley)  
**Subject:** Sen. Markey TSCA TA request on PFOA SNUR

Michal,  
This responds to the TA request on PFOA. Please let me know if any questions. Thanks,  
Sven

**Is there a PFOA SNUR in the works that relates to articles?**

Not PFOA per se, but for related chemicals, yes. In January 2015 EPA proposed a SNUR for long-chain perfluoroalkyl carboxylate (LCPFAC) chemical substances that would designate as a significant new use manufacturing (including importing) or processing of an identified subset of LCPFAC chemical substances for any use that will not be ongoing after December 31, 2015, and all other LCPFAC chemicals substances for which there are currently no ongoing uses. For this SNUR, EPA is also proposing to make inapplicable the exemption for persons who import LCPFAC chemical substances as part of articles.

**I thought PFOA was grandfathered onto the inventory?**

Yes, PFOA was included on the original TSCA Inventory.

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**From:** "Freedhoff, Michal (Markey)" <[Michal\\_Freedhoff@markey.senate.gov](mailto:Michal_Freedhoff@markey.senate.gov)>

**Date:** March 29, 2016 at 3:29:26 PM EDT

**To:** "Kaiser, Sven-Erik" <[Kaiser.Sven-Erik@epa.gov](mailto:Kaiser.Sven-Erik@epa.gov)>

**Cc:** "Black, Jonathan (Tom Udall)" <[Jonathan\\_Black@tomudall.senate.gov](mailto:Jonathan_Black@tomudall.senate.gov)>, "Deveny, Adrian (Merkley)" <[Adrian\\_Deveny@merkley.senate.gov](mailto:Adrian_Deveny@merkley.senate.gov)>

**Subject: PFOA SNUR?**

Sven

Is there a PFOA SNUR in the works that relates to articles? I thought PFOA was grandfathered onto the inventory?

Thx

M

Michal Ilana Freedhoff, Ph.D.

Director of Oversight and Investigations

Office of Senator Edward J. Markey (D-MA)

Message

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**From:** Kaiser, Sven-Erik [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=AC78D3704BA94EDBBD0DA970921271FF-SKAISER]  
**Sent:** 4/17/2016 5:51:43 PM  
**To:** jonathan\_black@tomudall.senate.gov  
**Subject:** Sen. Udall TSCA TA on "disclosure"

Jonathan - here's a more refined answer on the "disclosure" question.

Here are some possible options we have come up with quickly:

"information collection and dissemination"  
"information collection and availability"  
"requirements to collect information and make it available"  
"information collection and [public] release"

Please let me know if any questions. Thanks,

Sven

**From:** "Black, Jonathan (Tom Udall)"  
<[Jonathan\\_Black@tomudall.senate.gov](mailto:Jonathan_Black@tomudall.senate.gov)>  
**Date:** April 17, 2016 at 11:52:00 AM EDT  
**To:** "Kaiser, Sven-Erik" <[Kaiser.Sven-Erik@epa.gov](mailto:Kaiser.Sven-Erik@epa.gov)>, Jim Jones  
<[Jones.Jim@epa.gov](mailto:Jones.Jim@epa.gov)>  
**Subject:** Fw: "disclosure"

We were planning on "other information requirement". Is there another way to say disclosure?

I believe the house GOP concern was related to cbi concerns.

Sent from my BlackBerry 10 smartphone on the Verizon Wireless 4G LTE network.

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**From:** Richard Denison <[rdenison@edf.org](mailto:rdenison@edf.org)>

**Sent:** Sunday, April 17, 2016 11:43 AM

**To:** Black, Jonathan (Tom Udall)

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**Cc:** joanna

**Subject:** "disclosure"

Jonathan:

Where do things stand re House effort to delete "disclosure" from types of state action excluded from preemption, which I gather came up yesterday?

I strongly oppose that change and don't think the inclusion of "other information obligations" will suffice. If "disclosure" -- present in the Senate bill -- disappears from the final bill, there will be a strong argument Congress intentionally meant to preempt such state requirements.

There is no rationale I see for deleting it: Long ago we agreed that the principle to apply here was to limit preemption to state actions that restrict chemicals, which disclosure requirements do not.

Best, R

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Message

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**From:** Kaiser, Sven-Erik [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=AC78D3704BA94EDBBD0DA970921271FF-SKAISER]  
**Sent:** 4/9/2016 8:43:18 PM  
**To:** Freedhoff, Michal (Markey) [Michal\_Freedhoff@markey.senate.gov]  
**Subject:** Sen. Markey TSCA TA Re: 6a catch all

Michal- in response to the TA request on 6(a), we are ok with that language. Please let me know if any questions. Thanks,  
Sven

On Apr 9, 2016, at 4:28 PM, Freedhoff, Michal (Markey) <[Michal\\_Freedhoff@markey.senate.gov](mailto:Michal_Freedhoff@markey.senate.gov)> wrote:

Proposal to change your catch all language to 2A "prohibiting or otherwise regulating" to "prohibiting or otherwise restricting"

Michal Ilana Freedhoff, Ph.D.  
Director of Oversight and Investigations  
Office of Senator Edward J. Markey (D-MA)



Message

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**From:** Kaiser, Sven-Erik [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=AC78D3704BA94EDBBD0DA970921271FF-SKAISER]  
**Sent:** 4/23/2016 1:40:21 PM  
**To:** Freedhoff, Michal (Markey) [Michal\_Freedhoff@markey.senate.gov]  
**Subject:** Sen. Markey TSCA TA Question on Dates

Michal - this TA responds to the request on "enactment" date.

Date of enactment is date president signs. Effective date is generally the same, but Congress can specify a different date.

Please let me know if any additional questions. Thanks,  
Sven

Sven-Erik Kaiser  
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Office of Congressional and Intergovernmental Relations  
1200 Pennsylvania Ave., NW (1305A)  
Washington, DC 20460  
202-566-2753

On Apr 23, 2016, at 7:54 AM, Freedhoff, Michal (Markey) <[Michal\\_Freedhoff@markey.senate.gov](mailto:Michal_Freedhoff@markey.senate.gov)> wrote:

Sven

What is the difference between the effective date of the FRL act and the date of enactment of the FRL act? Is the date of enactment the date the President signs the law?

Thx  
M

Michal Ilana Freedhoff, Ph.D.  
Director of Oversight and Investigations  
Office of Senator Edward J. Markey (D-MA)

**From:** Kaiser, Sven-Erik [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=AC78D3704BA94EDBBD0DA970921271FF-SKAISER]  
**Sent:** 12/16/2016 4:15:28 PM  
**To:** Freedhoff, Michal (Markey) [Michal\_Freedhoff@markey.senate.gov]  
**Subject:** Sen. Markey Inquiry on TSCA Preemption and the MA bill on children's jewelry

Michal – this responds to your question about TSCA preemption and the MA bill on children’s jewelry - <https://malegislature.gov/Bills/189/H253>. Please take a look at EPA’s response and let me know if any questions. Thanks,  
Sven

As a preliminary matter, this response conveys EPA's general and preliminary interpretation of TSCA section 18 and is not intended to establish the preemption status of a particular state law.

Prior to the recent amendments to TSCA, EPA had issued 3 significant new use rules (SNURs) covering cadmium-containing chemicals - see 40 CFR 721.10888, 10889, 10890. The MA bill appears to codify an ASTM standard with specifications for cadmium and cadmium compounds in children’s jewelry, which could include the chemicals regulated in EPA’s SNURs. However, because EPA’s existing 3 SNURs are not “designed to protect against” a risk from those chemicals (the preemption standard for pre-amendment federal regulations), the portions of the MA bill pertaining to cadmium specifications would not be subject to preemption under TSCA § 18(d)(2). Further, because EPA has not otherwise regulated cadmium under new TSCA, the MA bill would not be subject to general preemption under TSCA § 18(a) or “pause” preemption under TSCA § 18(b). See below for a more detailed analysis:

- Under TSCA § 18(d)(2), the preemptive effect of federal regulations promulgated prior to the effective date of the Frank R. Lautenberg Chemical Safety for the 21st Century Act (“Act”) remains the same as the preemptive effect of those regulations prior to the enactment of the Act. Under the prior TSCA preemption scheme, TSCA § 18(a)(2) provided that a state requirement designed to protect against risk of injury to health or the environment from a chemical substance was preempted by a TSCA § 5 or 6 rule or order (other than a TSCA § 6(a)(6) rule) prescribed to protect against such risk, unless the state requirement was identical to the federal requirement, was adopted under the authority of another federal law, or prohibited the use of the substance in the state. It is the Agency’s position that SNURs are not actions “designed to protect against a risk” within the meaning of TSCA § 18. As such, state laws or actions addressing cadmium-containing chemicals are not subject to preemption under this provision.
- A state law or action prohibiting or otherwise restricting the manufacture, processing, distribution in commerce, or use of a chemical substance for which EPA has made a “no unreasonable risk” determination under TSCA § 6(i)(1) or for which EPA has promulgated a final TSCA 6(a) rule is subject to preemption under TSCA § 18(a)(1)(B), consistent with the scope of the risk evaluation for that substance. However, a state law or action of this type will not be preempted if it falls within an exception in TSCA § 18(d); if it falls within the “grandfather” provisions in TSCA § 18(e); or if EPA grants a waiver under TSCA § 18(f)(1). So long as EPA has not taken action under TSCA § 6(a) or 6(i)(1) with respect to cadmium, states are not prohibited or limited from regulating the manufacture, processing, distribution in commerce, or use of such chemical under TSCA § 18(a)(1)(B).
- A state law or action requiring the notification of a use of a chemical substance that EPA has specified as a significant new use and for which EPA has required notification pursuant to a TSCA § 5 rule is subject to preemption under TSCA § 18(a)(1)(C). If EPA issues a SNUR addressing cadmium, a state law or action requiring the notification of a use of that chemical will be subject to preemption under TSCA § 18(a)(1)(C). Again, a state law or action of this type will not be preempted if it falls within an exception in TSCA § 18(d); if it falls within the “grandfather” provisions in TSCA § 18(e); or if EPA grants a waiver under TSCA § 18(f)(1).

- A state law, criminal penalty, or administrative action prohibiting or restricting the manufacture, processing, distribution in commerce, or use of “a high-priority substance designated under [TSCA §] 6(b)(1)(B)(i)” is subject to “pause” preemption under TSCA § 18(b). The exemptions and exceptions from preemption under TSCA § 18(d), (e), and (f)(2) would be applicable if a state law, penalty or action is subject to TSCA § 18(b) “pause” preemption. Cadmium has not been designated as a high-priority substance, so states are not prohibited or restricted from regulating the manufacture, processing, distribution in commerce, or use of cadmium under TSCA § 18(b).

Sven-Erik Kaiser  
U.S. EPA  
Office of Congressional and Intergovernmental Relations  
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Message

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**From:** Kaiser, Sven-Erik [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=AC78D3704BA94EDBBD0DA970921271FF-SKAISER]  
**Sent:** 2/29/2016 2:16:34 PM  
**To:** Michal Freedhoff [Michal\_Freedhoff@markey.senate.gov]  
**Subject:** Re: Sen. Markey TSCA TA Request on cost considerations

Michal, can you give us any insights into the cost issue prior to the 2 pm call? Thanks,  
Sven

On Feb 29, 2016, at 9:14 AM, "Kaiser, Sven-Erik" <[Kaiser.Sven-Erik@epa.gov](mailto:Kaiser.Sven-Erik@epa.gov)> wrote:

Michal, for the 2pm call, we're checking to see if the document below is helpful for our discussion. Is there something else we should be looking at? Thanks,  
Sven

Begin forwarded message:

**From:** "Kaiser, Sven-Erik" <[Kaiser.Sven-Erik@epa.gov](mailto:Kaiser.Sven-Erik@epa.gov)>  
**Date:** January 5, 2016 at 3:54:39 PM EST  
**To:** "'Freedhoff, Michal (Markey)'" <[Michal\\_Freedhoff@markey.senate.gov](mailto:Michal_Freedhoff@markey.senate.gov)>  
**Subject:** Sen. Markey TSCA TA Request on cost considerations

Michal,  
In response to your request, please see the attached TA. Please let me know if any additional questions.  
Thanks,  
Sven

Sven-Erik Kaiser  
U.S. EPA  
Office of Congressional and Intergovernmental Relations  
1200 Pennsylvania Ave., NW (1305A)  
Washington, DC 20460  
202-566-2753

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**From:** Freedhoff, Michal (Markey) [[mailto:Michal\\_Freedhoff@markey.senate.gov](mailto:Michal_Freedhoff@markey.senate.gov)]  
**Sent:** Tuesday, December 15, 2015 4:26 PM  
**To:** Kaiser, Sven-Erik <[Kaiser.Sven-Erik@epa.gov](mailto:Kaiser.Sven-Erik@epa.gov)>  
**Subject:** TA - cost considerations in a rule

Sven

I'm attaching a document that lists in one place 4 different ways to factor costs into rulemaking. EPA has seen all of these before. I am trying to determine the following:

- 1) <!--[if !supportLists]--><!--[endif]-->Can you rank these in order of added analytic burden to EPA (ie analysis above what is already required under administrative law, RIA, what EPA would expect to do as part of any rulemaking analysis, etc), and describe briefly the basis for the ranking?
- 2) <!--[if !supportLists]--><!--[endif]-->Can you rank these in order of added litigation risk that the formulations may present, and describe (briefly) the basis for the ranking?

Thanks

Michal

<Markey.TSCA TA.Cost Considerations.docx>

Message

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**From:** Kaiser, Sven-Erik [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=AC78D3704BA94EDBBD0DA970921271FF-SKAISER]  
**Sent:** 4/20/2016 9:37:36 PM  
**To:** 'Freedhoff, Michal (Markey)' [Michal\_Freedhoff@markey.senate.gov]  
**CC:** Black, Jonathan (Tom Udall) [Jonathan\_Black@tomudall.senate.gov]; Deveny, Adrian (Merkley) [Adrian\_Deveny@merkley.senate.gov]  
**Subject:** Sen. Markey TSCA TA on PBTs and metals

Michal – got it - checking. Thanks,  
Sven

Sven-Erik Kaiser  
U.S. EPA  
Office of Congressional and Intergovernmental Relations  
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Washington, DC 20460  
202-566-2753

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**From:** Freedhoff, Michal (Markey) [mailto:Michal\_Freedhoff@markey.senate.gov]  
**Sent:** Wednesday, April 20, 2016 5:31 PM  
**To:** Kaiser, Sven-Erik <Kaiser.Sven-Erik@epa.gov>  
**Cc:** Black, Jonathan (Tom Udall) <Jonathan\_Black@tomudall.senate.gov>; Deveny, Adrian (Merkley) <Adrian\_Deveny@merkley.senate.gov>  
**Subject:** TA quick

In lieu of Senate metals language in prioritization

**The Administrator shall not use persistence, bioaccumulation and toxic criteria in prioritizing metals and metal compounds. The Administrator shall prioritize and assess any metals and metal compounds using the U.S. Environmental Protection Agency's Framework for Metals Assessment (EPA 120/R-07/001) (March 2007) or a successor document.**

- 1) ok w excluding pbt criteria for metals?
- 2) ok w not allowing epa to use "other applicable information consistent w best available science"?

Michal Ilana Freedhoff, Ph.D.  
Director of Oversight and Investigations  
Office of Senator Edward J. Markey (D-MA)

Message

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**From:** Kaiser, Sven-Erik [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=AC78D3704BA94EDBBD0DA970921271FF-SKAISER]  
**Sent:** 4/14/2016 8:59:34 PM  
**To:** 'Freedhoff, Michal (Markey)' [Michal\_Freedhoff@markey.senate.gov]  
**Subject:** FW: Sen. Markey TSCA TA Request - Quick on section 4

Michal,

This TA responds to the request on section 4 adding "federal."

This seems to do what it tries to – limit the requests for developing new information in 4(b)(1)(A)(iv) to requests from federal authorities, whereas they could presumably come from states implementing under a federal law under the language without the insertion of "federal."

This TA only responds to changes since the last version at the time we were reviewing. All previously offered TA is still germane to the extent the provision has not changed since the TA was offered. The technical assistance does not necessarily represent the policy positions of the agency and the administration on the bill, the draft language and the comments.

Please let me know if any questions. Thanks,  
Sven

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**From:** Freedhoff, Michal (Markey) [mailto:Michal\_Freedhoff@markey.senate.gov]  
**Sent:** Thursday, April 14, 2016 10:53 AM  
**To:** Kaiser, Sven-Erik <Kaiser.Sven-Erik@epa.gov>  
**Subject:** Quick on section 4

This may be too late as I think it was signed off on (by others) but this is a proposed change to section 4. Highlights and brackets note the added text.

this?

“(iv) at the request of the federal implementing authority under another Federal law, to meet the regulatory (hazard and exposure) testing needs of that authority;

Michal Ilana Freedhoff, Ph.D.  
Director of Oversight and Investigations  
Office of Senator Edward J. Markey (D-MA)

Message

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**From:** Kaiser, Sven-Erik [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=AC78D3704BA94EDBBD0DA970921271FF-SKAISER]  
**Sent:** 2/11/2016 10:08:20 PM  
**To:** Freedhoff, Michal (Markey) [Michal\_Freedhoff@markey.senate.gov]  
**Subject:** Re: Sen. Markey TSCA TA on definition of processor

Michal- this one would be easier to walk you through over the phone. Any availability for a call tomorrow- Fri, Feb 12.  
Thanks,  
Sven

On Feb 2, 2016, at 5:22 PM, "Freedhoff, Michal (Markey)" <[Michal\\_Freedhoff@markey.senate.gov](mailto:Michal_Freedhoff@markey.senate.gov)> wrote:

Question for you Sven –

I understand why repackaging a chemical would make you a processor from a safety perspective – if there was an occupational risk or a labeling requirement for 10 gallons, presumably there would also be one for 1 gallon too.

I'm having a tougher time understanding the safety nexus to the assembly question, if the steering wheel already contained the chemical substance and the wheel was just being attached to the steering column, just as an example. It would be helpful to understand EPA's perspective on this question because I'm sure this will come up.

Thanks  
Michal

Michal Ilana Freedhoff, Ph.D.  
Director of Oversight & Investigations  
Office of Senator Edward J. Markey  
255 Dirksen Senate Office Building  
Washington, DC 20510  
202-224-2742

**Connect with Senator Markey**

<image001.png><image002.png><image003.png><image004.jpg>

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**From:** Kaiser, Sven-Erik [<mailto:Kaiser.Sven-Erik@epa.gov>]  
**Sent:** Tuesday, February 02, 2016 5:16 PM  
**To:** Freedhoff, Michal (Markey)  
**Subject:** Sen. Markey TSCA TA on definition of processor

Michal,  
The attachment provides TA responding to your request. Please let me know if any questions. Thanks,  
Sven

Sven-Erik Kaiser  
U.S. EPA  
Office of Congressional and Intergovernmental Relations  
1200 Pennsylvania Ave., NW (1305A)  
Washington, DC 20460  
202-566-2753



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**From:** Freedhoff, Michal (Markey) [mailto:Michal\_Freedhoff@markey.senate.gov]

**Sent:** Thursday, January 28, 2016 3:09 PM

**To:** Kaiser, Sven-Erik <Kaiser.Sven-Erik@epa.gov>

**Subject:** TA request - definition of processor

Hi Sven

I have a couple questions about the definition of process/processor that have been raised by stakeholders.

- 1) First, there is a question about whether EPA could treat someone who took 10 gallon containers of a chemical substance and transferred the substance into smaller containers for sale as a processor? My read of the current statute is that YES, 10(A) would seem to allow this. Is that EPA's read as well and is there regulatory text that may further elaborate on the plain reading?
- 2) Second, what about companies who assemble things – ie install steering wheels in cars, or put furniture together? Could THEY be considered processors? My read is that 10(B) would NOT allow this, because if the chemical substance was already incorporated into the article, as it would be in the examples I used, (B) would make no sense in a reading that allowed these types of people to be treated as processors. Again, am I wrong on this, and is there any further regulatory or other elaboration on this point anywhere?

Thanks  
michal

(10) The term “process” means the preparation of a chemical substance or mixture, after its manufacture, for distribution in commerce—

(A) in the same form or physical state as, or in a different form or physical state from, that in which it was received by the person so preparing such substance or mixture, or

(B) as part of an article containing the chemical substance or mixture.

(11) The term “processor” means any person who processes a chemical substance or mixture.

Michal Ilana Freedhoff, Ph.D.

Director of Oversight & Investigations

Office of Senator Edward J. Markey

255 Dirksen Senate Office Building

Washington, DC 20510

202-224-2742

Connect with Senator Markey

<image001.png><image002.png><image003.png><image004.jpg>

Message

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**From:** Kaiser, Sven-Erik [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=AC78D3704BA94EDBBD0DA970921271FF-SKAISER]  
**Sent:** 4/17/2016 5:32:41 PM  
**To:** jonathan\_black@tomudall.senate.gov  
**Subject:** Sen. Udall TSCA TA request on "disclosure"

Jonathan,

This TA responds to the request on "disclosure." Here are some options to consider- it's a bit of a group effort providing a variety for you. Please let me know if any questions. Thanks,  
Sven

- "Other (information) requirements not intended to restrict a chemical"
- "...not intended to reduce exposure to a chemical"
- How about "information availability" or something about making information available, or publicly available?
- How about "information collection and dissemination"? Sounds less like disclosure of CBI. Or collection and access?

**From:** "Black, Jonathan (Tom Udall)" <[Jonathan\\_Black@tomudall.senate.gov](mailto:Jonathan_Black@tomudall.senate.gov)>

**Date:**

April  
17,  
2016  
at  
11:52:  
00 AM  
EDT

**To:**

"Kaiser  
, Sven-  
Erik"  
<[Kaiser.Sven-Erik@epa.gov](mailto:Kaiser.Sven-Erik@epa.gov)>  
, Jim  
Jones  
<[Jones.Jim@epa.gov](mailto:Jones.Jim@epa.gov)>  
>

**Subject:**

**Fw:**  
"disclosure"

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**From:** Richard Denison <[rdenison@edf.org](mailto:rdenison@edf.org)>  
**Sent:** Sunday, April 17, 2016 11:43 AM  
**To:** Black, Jonathan (Tom Udall)  
**Cc:** joanna  
**Subject:** "disclosure"

Jonatha  
n:

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Message

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**From:** Kaiser, Sven-Erik [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=AC78D3704BA94EDBBD0DA970921271FF-SKAISER]  
**Sent:** 4/26/2016 5:15:46 PM  
**To:** 'Fruci, Jean' [Jean.Fruci@mail.house.gov]  
**Subject:** RE: HEC min TSCA TA request on section 5 and 8

Jean - thanks for arranging. Can you tell me who you expect from Ds and Rs. I'll have Wendy, Ryan Schmit, Brian Grant (OGC) and David Bero (OGC). Best,  
Sven

Sven-Erik Kaiser  
U.S. EPA  
Office of Congressional and Intergovernmental Relations  
1200 Pennsylvania Ave., NW (1305A)  
Washington, DC 20460  
202-566-2753

-----Original Message-----

From: Fruci, Jean [mailto:Jean.Fruci@mail.house.gov]  
Sent: Tuesday, April 26, 2016 12:34 PM  
To: Kaiser, Sven-Erik <Kaiser.Sven-Erik@epa.gov>  
Subject: Re: HEC min TSCA TA request on section 5 and 8

Room 255 Ford

----- Original Message -----

From: Kaiser, Sven-Erik [mailto:Kaiser.Sven-Erik@epa.gov]  
Sent: Tuesday, April 26, 2016 12:13 PM Eastern Standard Time  
To: Fruci, Jean  
Cc: Cohen, Jacqueline  
Subject: HEC min TSCA TA request on section 5 and 8

Jean and Jacqueline,  
We are okay with 2:30 pm at Ford. Room number? Thanks, Sven

On Apr 26, 2016, at 11:19 AM, Fruci, Jean <Jean.Fruci@mail.house.gov> wrote:

We would like you to come over to the Ford building to meet with us on pending language amending Sections 5 and 8 of TSCA this afternoon at either 2:30 or 3:00pm. Thanks.

Message

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**From:** Kaiser, Sven-Erik [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=AC78D3704BA94EDBBD0DA970921271FF-SKAISER]  
**Sent:** 4/23/2016 11:58:49 AM  
**To:** Freedhoff, Michal (Markey) [Michal\_Freedhoff@markey.senate.gov]  
**Subject:** Sen. Markey TSCA TA Question on dates

Michal,  
That sounds right to me -- I'll check with folks to confirm. Please let me know if any additional questions.  
Thanks,  
Sven

On Apr 23, 2016, at 7:54 AM, Freedhoff, Michal (Markey) <[Michal\\_Freedhoff@markey.senate.gov](mailto:Michal_Freedhoff@markey.senate.gov)> wrote:

Sven

What is the difference between the effective date of the FRL act and the date of enactment of the FRL act? Is the date of enactment the date the President signs the law?

Thx  
M

Michal Ilana Freedhoff, Ph.D.  
Director of Oversight and Investigations  
Office of Senator Edward J. Markey (D-MA)



Message

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**From:** Kaiser, Sven-Erik [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=AC78D3704BA94EDBBD0DA970921271FF-SKAISER]  
**Sent:** 2/29/2016 2:14:51 PM  
**To:** Michal Freedhoff [Michal\_Freedhoff@markey.senate.gov]  
**Subject:** Fwd: Sen. Markey TSCA TA Request on cost considerations  
**Attachments:** Markey.TSCA TA.Cost Considerations.docx; ATT00001.htm

Michal, for the 2pm call, we're checking to see if the document below is helpful for our discussion. Is there something else we should be looking at? Thanks,  
Sven

Begin forwarded message:

**From:** "Kaiser, Sven-Erik" <Kaiser.Sven-Erik@epa.gov>  
**Date:** January 5, 2016 at 3:54:39 PM EST  
**To:** "'Freedhoff, Michal (Markey)'" <Michal\_Freedhoff@markey.senate.gov>  
**Subject:** Sen. Markey TSCA TA Request on cost considerations

Michal,  
In response to your request, please see the attached TA. Please let me know if any additional questions.  
Thanks,  
Sven

Sven-Erik Kaiser  
U.S. EPA  
Office of Congressional and Intergovernmental Relations  
1200 Pennsylvania Ave., NW (1305A)  
Washington, DC 20460  
202-566-2753

---

**From:** Freedhoff, Michal (Markey) [mailto:Michal\_Freedhoff@markey.senate.gov]  
**Sent:** Tuesday, December 15, 2015 4:26 PM  
**To:** Kaiser, Sven-Erik <Kaiser.Sven-Erik@epa.gov>  
**Subject:** TA - cost considerations in a rule

Sven

I'm attaching a document that lists in one place 4 different ways to factor costs into rulemaking. EPA has seen all of these before. I am trying to determine the following:

- 1) <!--[if !supportLists]--><!--[endif]-->Can you rank these in order of added analytic burden to EPA (ie analysis above what is already required under administrative law, RIA, what EPA would expect to do as part of any rulemaking analysis, etc), and describe briefly the basis for the ranking?
- 2) <!--[if !supportLists]--><!--[endif]-->Can you rank these in order of added litigation risk that the formulations may present, and describe (briefly) the basis for the ranking?

Thanks  
Michal

*This language is provided by EPA as technical assistance in response to a congressional request. The technical assistance is intended for use only by the requester. The technical assistance does not necessarily represent the policy positions of the agency and the administration on the bill, the draft language and the comments.*

*1) Can you rank these in order of added analytic burden to EPA (ie analysis above what is already required under administrative law, RIA, what EPA would expect to do as part of any rulemaking analysis, etc), and describe briefly the basis for the ranking?*

*2) Can you rank these in order of added litigation risk that the formulations may present, and describe (briefly) the basis for the ranking?*

### **Cost Considerations in a Rule**

#### **S 697**

“(4) ANALYSIS FOR RULEMAKING.—

“(A) CONSIDERATIONS.—In deciding which restrictions to impose under paragraph (3) as part of developing a rule under paragraph (1), the Administrator shall take into consideration, to the extent practicable based on reasonably available information, the quantifiable and nonquantifiable costs and benefits of the proposed regulatory action and of the 1 or more primary alternative regulatory actions considered by the Administrator.

“(B) ALTERNATIVES.—As part of the analysis, the Administrator shall review any 1 or more technically and economically feasible alternatives to the chemical substance that the Administrator determines are relevant to the rulemaking.

“(C) PUBLIC AVAILABILITY.—In proposing a rule under paragraph (1), the Administrator shall make publicly available any analysis conducted under this paragraph.

“(D) STATEMENT REQUIRED.—In making final a rule under paragraph (1), the Administrator shall include a statement describing how the analysis considered under subparagraph (A) was taken into account.

### **MERGED HOUSE/SENATE PROPOSAL (ALTERNATIVE TO HOUSE COST LANGUAGE)**

#### **d) PROMULGATION OF SUBSECTION (b) RULES.**

**(1) REQUIREMENTS FOR RULE.**—In promulgating any rule under subsection (b) with respect to a chemical substance or mixture, the Administrator shall factor in the following considerations, and publish a statement describing how they were factored into the rule—

**(A)** the effects of ~~such~~**the chemical** substance or mixture on health and the magnitude of the exposure of human beings to **the chemical** ~~such~~ substance or mixture;

**(B)** the effects of ~~such~~**the chemical** substance or mixture on the environment and the magnitude of the exposure of the environment to such substance or mixture;;

**(C)** the benefits of ~~such~~**the chemical** substance or mixture for various uses; and ~~the availability of substitutes for such uses, and~~

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(D)) the reasonably ascertainable economic consequences of the rule, after consideration of

(i) after the **likely** effect ~~on~~ **of the rule on** the national economy, small business, technological innovation, the environment, and public health;-

(ii) the quantifiable and nonquantifiable costs and benefits of the proposed regulatory action and of the 1 or more primary alternative regulatory actions considered by the Administrator. ;

(E) any 1 or more technically and economically feasible alternatives to the chemical substance that the Administrator determines are relevant to the rulemaking. ;

#### **H 2576 AS MODIFIED USING EPA TA**

**(B) impose requirements under the rule that the Administrator determines, to the extent practicable based on the information published under subparagraph (A), are cost-effective, except where the Administrator determines that additional or different requirements described in subsection (a) are necessary to ensure that the chemical substance no longer presents or will present an unreasonable risk, including an identified unreasonable risk to a potentially exposed population.**

#### **H 2576**

(B) impose requirements under the rule that the Administrator determines, consistent with the information published under subparagraph (A), are cost-effective, except where the Administrator determines that additional or different requirements described in subsection (a) are necessary to protect against the identified risks.

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	<b>Burden relative to baseline</b>	<b>Litigation Risk</b>
S. 697 (d)(4) Analysis requirements	<p><b><u>Lowest Analytical Burden (Tied) Relative to Baseline</u></b></p> <p>Roughly tracks E.O. 12866 requirements, but applies irrespective of whether action deemed “significant” under the E.O.</p> <p>Analytical burden limited to what is “practicable” and data inputs limited to what is “reasonably available”</p> <p>Statement describing how analysis was taken into account is already a baseline requirement of administrative law.</p>	<p><b><u>Lowest Litigation Risk</u></b></p> <p>Litigation opportunities to challenge rule roughly track what would already be available under APA under the substantial evidence standard,</p> <p>Scope of litigation would roughly track typical APA litigation, except that failure to include mandatory considerations in the overall discussion of why the rule is warranted would be a basis</p> <p>Most of these considerations would likely be raised by stakeholders in public comment anyway, which would establish an obligation for EPA to consider the issues, even if they were not statutorily specified.</p>

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	<b>Burden relative to baseline</b>	<b>Litigation Risk</b>
H.R. 2576, entirely dropping “cost-effective” paragraph (B) but modifying (A) above per new Senate Proposal	<p><b><u>Lowest Analytical Burden (Tied) Relative to Baseline</u></b></p> <p>Roughly tracks E.O. 12866 requirements, but applies irrespective of whether action deemed “significant” under the E.O.</p> <p>Analytical burden limited to what is “practicable” and data inputs limited to what is “reasonably available”</p> <p>Requirement to “factor” considerations into a decisions and publish explanatory statement is already a baseline requirement of administrative law. No increase in burden from requirement to “consider and publish a statement”</p>	<p><b><u>Second Lowest Litigation Risk</u></b></p> <p>Litigation opportunities to challenge rule roughly track what would already be available under APA under the substantial evidence standard,</p> <p>Scope of litigation would roughly track typical APA litigation, except that failure to include mandatory considerations in the overall discussion of why the rule is warranted would be a basis</p> <p>Most of these considerations would likely be raised by stakeholders in public comment anyway, which would establish an obligation for EPA to consider the issues, even if they were not statutorily specified.</p> <p>Relative to H.R. 2576, list of mandatory factors is more prescriptive, somewhat increasing litigation opportunities to claim EPA failed to consider one of the points.</p>

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	<b>Burden relative to baseline</b>	<b>Litigation Risk</b>
H.R. 2576 paragraph (B) as modified	<p><b><u>Intermediate Analytical Burden Relative to Baseline</u></b></p> <p>EPA must either justify substantive economic conclusion that regulation is “cost-effective” or that a non-cost-effective alternative was “necessary.”</p> <p>Introduces a requirement to determine that the selected option is cost-effective, or, if EPA selects a non-cost-effective option, to determine that there are no protective cost-effective options; but these analytic burdens are bounded by what is practicable based on the information already required to be considered in the rulemaking. Failure to meet the safety standard is clearly a basis to deem an alternative unacceptable.</p> <p>Arguably also implicitly limited by the “reasonably ascertainable” caveat in paragraph (A), regarding analysis of economic consequences.</p>	<p><b><u>Third Lowest Litigation Risk</u></b></p> <p>Establishes a new legal duty, above and beyond baseline obligations to justify the rule, to either make a “cost-effectiveness” determination or a “necessity” determination. The determination could be a basis for additional litigation claims.</p> <p>There is some uncertainty about how many cost-effective alternatives EPA must screen and find to be unsuitable in order to conclude that a non-cost-effective alternative is necessary, but this is moderated by the “practicable” language.</p>

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	<b>Burden relative to baseline</b>	<b>Litigation Risk</b>
H.R. 2576 paragraph (B) status quo	<p><b><u>Highest Introduced Burden Relative to Baseline</u></b></p> <p>EPA must either justify substantive economic conclusion that regulation is “cost-effective” or that a non-cost-effective alternative was “necessary.”</p> <p>Introduces the same analytic objectives as paragraph (B) as modified, but the analysis is less clearly bounded by the information already required to be considered in the rulemaking. Failure to meet the safety standard is very likely a basis to deem an alternative unacceptable.</p> <p>Arguably implicitly limited by the “reasonably ascertainable” caveat in paragraph (A), regarding analysis of economic consequences.</p>	<p><b><u>Highest Litigation Risk</u></b></p> <p>Establishes a new legal duty, above and beyond baseline obligations to justify the rule, to either make a “cost-effectiveness” determination or a “necessity” determination. The determination could be a basis for additional litigation claims.</p> <p>There is significant uncertainty about how many cost-effective alternatives EPA must screen and find to be unsuitable in order to conclude that a non-cost-effective alternative is necessary.</p>

Message

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**From:** Kaiser, Sven-Erik [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=AC78D3704BA94EDBBD0DA970921271FF-SKAISER]  
**Sent:** 3/9/2016 10:19:52 PM  
**To:** 'Black, Jonathan (Tom Udall)' [Jonathan\_Black@tomudall.senate.gov]  
**Subject:** Sen. Udall TSCA TA Request on House discussion draft

Jonathan – are you still interested in these questions or overtaken by events? Thanks,  
Sven

Sven-Erik Kaiser  
U.S. EPA  
Office of Congressional and Intergovernmental Relations  
1200 Pennsylvania Ave., NW (1305A)  
Washington, DC 20460  
202-566-2753

---

**From:** Black, Jonathan (Tom Udall) [mailto:Jonathan\_Black@tomudall.senate.gov]  
**Sent:** Friday, March 04, 2016 3:46 PM  
**To:** Kaiser, Sven-Erik <Kaiser.Sven-Erik@epa.gov>  
**Cc:** Freedhoff, Michal (Markey) <Michal\_Freedhoff@markey.senate.gov>; Deveny, Adrian (Merkley) <Adrian\_Deveny@merkleysenate.gov>  
**Subject:** Re: House discussion draft

Not super urgent. Early next week seem feasible?

Sent from my BlackBerry 10 smartphone on the Verizon Wireless 4G LTE network.

---

**From:** Kaiser, Sven-Erik  
**Sent:** Friday, March 4, 2016 3:45 PM  
**To:** Black, Jonathan (Tom Udall)  
**Cc:** Freedhoff, Michal (Markey); Deveny, Adrian (Merkley)  
**Subject:** Re: House discussion draft

Jonathan- got it. Timing? Thanks,  
Sven

On Mar 4, 2016, at 3:04 PM, Black, Jonathan (Tom Udall) <Jonathan\_Black@tomudall.senate.gov> wrote:

Sven, wondering if your crew could take a look at the attached House discussion draft and answer the following questions.

- Did anything in this offer address the specific concerns raised in EPA's January 20<sup>th</sup> letter? And if so, how?
- Do any of the additions raise workability or implementation concerns?
- Does the House discussion draft address the major concerns from the EPA Jan. 20<sup>th</sup> letter to ensure that safety decisions are made absent consideration of costs?
- Does the House draft ensure an affirmative safety finding for new chemicals?



- Do the changes require EPA to review substantiation for past CBI claims?
- Do the changes ensure that industry-requested chemicals will not be expedited relative to chemicals that EPA selects itself?

<RDS\_01\_xml.pdf>

<Outline.docx>

Message

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**From:** Kaiser, Sven-Erik [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=AC78D3704BA94EDBBD0DA970921271FF-SKAISER]  
**Sent:** 3/15/2016 5:12:38 PM  
**To:** 'Freedhoff, Michal (Markey)' [Michal\_Freedhoff@markey.senate.gov]  
**Subject:** Sen. Markey TSCA TA Request on CBI - health and safety studies

Michal,  
This responds to your TA request on CBI and health and safety studies.

**Question:** Currently if there is CBI in a health and safety study that is not the chemID sort that existing tsca protects, does EPA redact that CBI prior to releasing the health and safety study?

EPA Response: The companies provide a sanitized version of the submission which is what we publish, assuming no final determination has been made regarding eligibility for confidential treatment.

Please let me know if any additional questions. Thanks,  
Sven

Sven-Erik Kaiser  
U.S. EPA  
Office of Congressional and Intergovernmental Relations  
1200 Pennsylvania Ave., NW (1305A)  
Washington, DC 20460  
202-566-2753

---

**From:** Freedhoff, Michal (Markey) [mailto:Michal\_Freedhoff@markey.senate.gov]  
**Sent:** Tuesday, March 15, 2016 10:32 AM  
**To:** Kaiser, Sven-Erik <Kaiser.Sven-Erik@epa.gov>  
**Subject:** TA - health and safety studies

Sven

Currently if there is CBI in a health and safety study that is not the chemID sort that existing tsca protects, does EPA redact that CBI prior to releasing the health and safety study?

Thx  
M

Michal Ilana Freedhoff, Ph.D.  
Director of Oversight and Investigations  
Office of Senator Edward J. Markey (D-MA)

Message

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**From:** Kaiser, Sven-Erik [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=AC78D3704BA94EDBBD0DA970921271FF-SKAISER]  
**Sent:** 3/28/2016 8:17:30 PM  
**To:** 'Black, Jonathan (Tom Udall)' [Jonathan\_Black@tomudall.senate.gov]; Freedhoff, Michal (Markey) [Michal\_Freedhoff@markey.senate.gov]; Deveny, Adrian (Merkley) [Adrian\_Deveny@merkley.senate.gov]  
**Subject:** Sen. Udall TSCA TA on CBI - 14(c)(1)(B)

Jonathan,  
This TA responds to the request on 14(c)(1)(B)(i).

We agree that deleting 14(c)(1)(B)(i) would have no adverse implementation impact. If a chem ID claim was asserted consistent with 14(d), then 14(c)(1)(B)(i) wouldn't apply. If a chem ID claim was asserted inconsistent with 14(d), then it is already invalid, and 14(c)(1)(B)(i) adds nothing further. For the same reasons, as we have commented before, the *retention* of this provision may have adverse implementation impacts, since it might imply that information other than chem ID could be protectable even if the associated claim does not meet the requirements of section 14(d).

Deleting 14(c)(1)(B)(ii) would have an implementation impact unless there was substantial revision to 26(i)(2) to compensate for the deletion. Section 26(i)(2) is entirely "[s]ubject to section 14." That means the imperative to withhold under section 14 overrides any imperative to release under 26(i)(2). So long as that language on relative priority is retained, new language in 26(i)(2) cannot be used to neutralize the deletion of language in section 14. Also, the scope of materials subject to 26(i) is not the same as the scope of materials subject to 14(c)(1)(B)(ii). For example, the risk evaluation itself is not covered under 26(i), but it is covered under 14(c)(1)(B)(ii).

The technical assistance is intended for use only by the requester. The technical assistance does not necessarily represent the policy positions of the agency and the administration on the bill, the draft language and the comments. Please let me know if any questions. Thanks,  
Sven

Sven-Erik Kaiser  
U.S. EPA  
Office of Congressional and Intergovernmental Relations  
1200 Pennsylvania Ave., NW (1305A)  
Washington, DC 20460  
202-566-2753

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**From:** Black, Jonathan (Tom Udall) [mailto:Jonathan\_Black@tomudall.senate.gov]  
**Sent:** Monday, March 28, 2016 10:58 AM  
**To:** Kaiser, Sven-Erik <Kaiser.Sven-Erik@epa.gov>  
**Cc:** Freedhoff, Michal (Markey) <Michal\_Freedhoff@markey.senate.gov>; Deveny, Adrian (Merkley) <Adrian\_Deveny@merkley.senate.gov>  
**Subject:** CBI request - 14(c)(1)(B)

Hi Sven,

In 14(c)(1)(B)

Does EPA feel (i) is redundant and can be removed without any real impact?  
We are considering deleting (ii) as well, but making sure it is clearly stated in sec. 26. Concerns?

(B) OTHER INFORMATION NOT PROTECTED FROM

DISCLOSURE.—The following information is not protected from disclosure under this section:

(i) For information submitted after the date of enactment of the Frank R. Lautenberg Chemical Safety for the 21st Century Act, the specific identity of a chemical substance as of the date on which the chemical substance is first offered for commercial distribution, if the person submitting the information does not meet the requirements of subsection (d)

(ii) A safety assessment developed, or a safety determination made, under section 6.

(iii) Any general information describing the manufacturing volumes, expressed as specific aggregated volumes or, if the Administrator determines that disclosure of specific aggregated volumes would reveal confidential information, expressed in ranges.

(iv) A general description of a process used in the manufacture or processing and industrial, commercial, or consumer functions and uses of a chemical substance, mixture, or article containing a chemical substance or mixture, including information specific to an industry or industry sector that customarily would be shared with the general public or within an industry or industry sector.

Message

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**From:** Kaiser, Sven-Erik [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=AC78D3704BA94EDBBD0DA970921271FF-SKAISER]  
**Sent:** 4/6/2016 11:53:19 PM  
**To:** Freedhoff, Michal (Markey) [Michal\_Freedhoff@markey.senate.gov]  
**Subject:** Re: Sen. Markey TSCA TA request on PCBs and partial REs

Michal,

I'll keep my phone close. Nats opening day tomorrow at 4pm although could be a rainout. Several of our team planning to go. Thanks,  
Sven

On Apr 6, 2016, at 7:50 PM, Freedhoff, Michal (Markey) <[Michal\\_Freedhoff@markey.senate.gov](mailto:Michal_Freedhoff@markey.senate.gov)> wrote:

Thanks. I will keep this in mind as we work through 6.

Michal Ilana Freedhoff, Ph.D.  
Director of Oversight and Investigations  
Office of Senator Edward J. Markey (D-MA)

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**From:** Kaiser, Sven-Erik  
**Sent:** Wednesday, April 6, 2016 7:49 PM  
**To:** Freedhoff, Michal (Markey)  
**Subject:** Sen. Markey TSCA TA request on PCBs and partial REs

Michal,

This TA responds to the request on PCBs and partial REs. Please let me know if any questions. Thanks,  
Sven

We agree that section 6(e) provides sufficient authority for EPA to revise existing PCB regulations without going through the new process.

With respect to other chemicals, we are not sure there is a clear answer. We believe EPA has the authority to make relatively minor updates or adjustments to existing section 6(a) rules without going through the new section 6 processes, based on the implied authority to amend rules already promulgated. That said, we are doubtful EPA could, as you suggest, add new hazards, uses or restrictions (at least significant ones) without going through the new process. The dividing line might be whether EPA is updating or making corrections or other minor adjustments to an existing rule on one hand, or expanding the scope of an existing rule on the other. That said, we have not done legal research on this and do not know the answer definitively.

**From:** "Freedhoff, Michal (Markey)" <[Michal\\_Freedhoff@markey.senate.gov](mailto:Michal_Freedhoff@markey.senate.gov)>

**Date:** April 6, 2016 at 5:28:49 AM EDT  
**To:** "Kaiser, Sven-Erik" <[Kaiser.Sven-Erik@epa.gov](mailto:Kaiser.Sven-Erik@epa.gov)>  
**Subject:** Another question in the partial RE space

Sven

I'm not sure if this is addressable no matter your response, but wanted your team's take (after section 4 and 14).

You've regulated a number of things under section 6. Other than PCBS which has its own subsection, is it your read that if you wanted to revise regulations for any of those chemicals, you'd need to designate them a high priority and go through a new RE? Or do you read the bill and EPA's general authority as being sufficient to allow you to amend existing regulations to add new hazards, uses, restrictions, etc? Do you also agree that the PCB subsection should provide you with sufficient authority to revise the PCB regs without going through the new process?

Thanks

M

Michal Ilana Freedhoff, Ph.D.  
Director of Oversight and Investigations  
Office of Senator Edward J. Markey (D-MA)

Message

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**From:** Kaiser, Sven-Erik [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=AC78D3704BA94EDBBD0DA970921271FF-SKAISER]  
**Sent:** 3/15/2016 2:36:16 PM  
**To:** 'Freedhoff, Michal (Markey)' [Michal\_Freedhoff@markey.senate.gov]  
**Subject:** Sen. Markey TSCA TA Inquiry on CBI - health and safety studies

Michal – got it, checking. Thanks,  
Sven

Sven-Erik Kaiser  
U.S. EPA  
Office of Congressional and Intergovernmental Relations  
1200 Pennsylvania Ave., NW (1305A)  
Washington, DC 20460  
202-566-2753

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**From:** Freedhoff, Michal (Markey) [mailto:Michal\_Freedhoff@markey.senate.gov]  
**Sent:** Tuesday, March 15, 2016 10:32 AM  
**To:** Kaiser, Sven-Erik <Kaiser.Sven-Erik@epa.gov>  
**Subject:** TA - health and safety studies

Sven

Currently if there is CBI in a health and safety study that is not the chemID sort that existing tsca protects, does EPA redact that CBI prior to releasing the health and safety study?

Thx  
M

Michal Ilana Freedhoff, Ph.D.  
Director of Oversight and Investigations  
Office of Senator Edward J. Markey (D-MA)

Message

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**From:** Kaiser, Sven-Erik [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=AC78D3704BA94EDBBD0DA970921271FF-SKAISER]  
**Sent:** 10/11/2016 5:48:40 PM  
**BCC:** Karakitsos, Dimitri (EPW) [Dimitri\_Karakitsos@epw.senate.gov]; Jackson, Ryan (Inhofe) [Ryan\_Jackson@inhofe.senate.gov]; Fox, Thomas (EPW) [Thomas\_Fox@epw.senate.gov]; 'Albritton, Jason (EPW)' [Jason\_Albritton@epw.senate.gov]; Poirier, Bettina (EPW) [Bettina\_Poirier@epw.senate.gov]; McCarthy, David [David.McCarthy@mail.house.gov]; Richards, Tina [Tina.Richards@mail.house.gov]; Couri, Jerry [JerryCouri@mail.house.gov]; 'Cohen, Jacqueline' [jackie.cohen@mail.house.gov]; Fruci, Jean [Jean.Fruci@mail.house.gov]; Black, Jonathan (Tom Udall) [Jonathan\_Black@tomudall.senate.gov]; Freedhoff, Michal (Markey) [Michal\_Freedhoff@markey.senate.gov]; Zipkin, Adam (Booker) [Adam\_Zipkin@booker.senate.gov]; Wojciechowski, Adrienne (Judiciary-Dem) [Adrienne\_Wojciechowski@Judiciary-dem.senate.gov]; 'Deveny, Adrian (Merkley)' [Adrian\_Deveny@merkley.senate.gov]; Enderle, Emily (Whitehouse) [Emily\_Enderle@whitehouse.senate.gov]; Hunt, Jasmine (Durbin) [Jasmine\_Hunt@durbin.senate.gov]; rick.kessler@mail.house.gov; tuley.wright@mail.house.gov; Bastian, Eleanor [Eleanor.Bastian@mail.house.gov]; Espinosa, Sergio [Sergio.Espinosa@mail.house.gov]; laura\_gillam@carper.senate.gov; jordan\_baugh@gillibrand.senate.gov; Tharpe, Amanda (Rounds) [Amanda\_Tharpe@rounds.senate.gov]; Schmit, Ryan [/O=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=7077ecbac4914a00ad465398f92bbe78-Schmit, Ryan]; Strauss, Linda [/O=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=301660ea0f7845769db2210317516451-Strauss, Linda]; Distefano, Nichole [/O=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31d32a3a3a9e4591b5fdc3eb96e8b78-Distefano,]; Brown, Tristan [/O=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=2524f58c2f0442cbbd025cdcbd4d1f7e-Hilton, Tri]  
**Subject:** Notification: EPA Fast Tracks Five PBT Chemicals under TSCA section 6(h)

Heads up that EPA is taking steps to carry out requirements under TSCA reform to reduce exposure to certain persistent, bioaccumulative, and toxic (PBT) chemicals.

The five chemicals to receive expedited action under TSCA section 6(h) are:

- Decabromodiphenyl ethers (DecaBDE), used as a flame retardant in textiles, plastics and polyurethane foam;
- Hexachlorobutadiene (HCBD), used in the manufacture of rubber compounds and lubricants and as a solvent;
- Pentachlorothio-phenol (PCTP), used as an agent to make rubber more pliable in industrial uses;
- Tris (4-isopropylphenyl) phosphate, used as a flame retardant in consumer products and other industrial uses; and
- 2,4,6-Tris(tert-butyl)phenol, used as a fuel, oil, gasoline or lubricant additive.

The new law gave manufacturers an opportunity to request by September 19, 2016, that EPA conduct risk evaluations for the PBT chemicals on EPA's 2014 Work Plan, as an alternative to expedited action. Requests for risk evaluations were made for two chemicals that can be used in fragrance mixtures.

For the remaining PBT chemicals, EPA must move ahead to take expedited action to reduce exposure to those chemicals to the extent practicable. After EPA finishes identifying where these chemicals are used and how people are exposed to them, the Agency will move directly to propose limitations on their use. The statutory deadline for EPA to propose action is June 22, 2019.

PBT chemicals are of particular concern because they remain in the environment for significant periods of time and concentrate in the organisms exposed to them. These pollutants can transfer among air, water, and land, and span boundaries of geography and generations.

For more about TSCA reform and EPA's implementation activities, and to sign up for updates, visit:

<https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/frank-r-lautenberg-chemical-safety-21st-century-act>.

Please let me know if any questions. Thanks,  
Sven



Sven-Erik Kaiser  
U.S. EPA  
Office of Congressional and Intergovernmental Relations  
1200 Pennsylvania Ave., NW (1305A)  
Washington, DC 20460  
202-566-2753

Message

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**From:** Kaiser, Sven-Erik [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=AC78D3704BA94EDBBD0DA970921271FF-SKAISER]  
**Sent:** 4/17/2016 4:02:54 PM  
**To:** Black, Jonathan (Tom Udall) [Jonathan\_Black@tomudall.senate.gov]  
**CC:** Jones, Jim [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c32c4b9347004778b0a93a4cbd83fc8a-JJONES1]  
**Subject:** Sen. Udall TSCA TA Re: "disclosure"

Jonathan,  
Got it- checking. Thanks,  
Sven

On Apr 17, 2016, at 11:52 AM, Black, Jonathan (Tom Udall) <Jonathan\_Black@tomudall.senate.gov> wrote:

We were planning on "other information requirement". Is there another way to say disclosure?

I believe the house GOP concern was related to cbi concerns.

Sent from my BlackBerry 10 smartphone on the Verizon Wireless 4G LTE network.

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**From:** Richard Denison <rdenison@edf.org>  
**Sent:** Sunday, April 17, 2016 11:43 AM  
**To:** Black, Jonathan (Tom Udall)  
**Cc:** joanna  
**Subject:** "disclosure"

Jonathan:

Where do things stand re House effort to delete "disclosure" from types of state action excluded from preemption, which I gather came up yesterday?

I strongly oppose that change and don't think the inclusion of "other information obligations" will suffice. If "disclosure" -- present in the Senate bill -- disappears from the final bill, there will be a strong argument Congress intentionally meant to preempt such state requirements.

There is no rationale I see for deleting it: Long ago we agreed that the principle to apply here was to limit preemption to state actions that restrict chemicals, which disclosure requirements do not.

Best, R

This e-mail and any attachments may contain confidential and privileged information. If you are not the intended recipient, please notify the sender immediately by return e-mail, delete this e-mail and destroy any copies. Any dissemination or use of this information by a person other than the intended recipient is unauthorized and may be illegal.

Message

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**From:** Kaiser, Sven-Erik [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=AC78D3704BA94EDBBD0DA970921271FF-SKAISER]  
**Sent:** 4/26/2016 4:13:37 PM  
**To:** Fruci, Jean [Jean.Fruci@mail.house.gov]  
**CC:** Cohen, Jacqueline [jackie.cohen@mail.house.gov]  
**Subject:** HEC min TSCA TA request on section 5 and 8

Jean and Jacqueline,  
We are okay with 2:30 pm at Ford. Room number? Thanks,  
Sven

On Apr 26, 2016, at 11:19 AM, Fruci, Jean <Jean.Fruci@mail.house.gov> wrote:

We would like you to come over to the Ford building to meet with us on pending language amending Sections 5 and 8 of TSCA this afternoon at either 2:30 or 3:00pm. Thanks.

Message

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**From:** Kaiser, Sven-Erik [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=AC78D3704BA94EDBBD0DA970921271FF-SKAISER]  
**Sent:** 4/6/2016 11:49:30 PM  
**To:** Michal\_Freedhoff@markey.senate.gov  
**Subject:** Sen. Markey TSCA TA request on PCBs and partial REs

Michal,

This TA responds to the request on PCBs and partial REs. Please let me know if any questions. Thanks,  
Sven

We agree that section 6(e) provides sufficient authority for EPA to revise existing PCB regulations without going through the new process.

With respect to other chemicals, we are not sure there is a clear answer. We believe EPA has the authority to make relatively minor updates or adjustments to existing section 6(a) rules without going through the new section 6 processes, based on the implied authority to amend rules already promulgated. That said, we are doubtful EPA could, as you suggest, add new hazards, uses or restrictions (at least significant ones) without going through the new process. The dividing line might be whether EPA is updating or making corrections or other minor adjustments to an existing rule on one hand, or expanding the scope of an existing rule on the other. That said, we have not done legal research on this and do not know the answer definitively.

**From:** "Freedhoff, Michal (Markey)" <[Michal\\_Freedhoff@markey.senate.gov](mailto:Michal_Freedhoff@markey.senate.gov)>

**Date:** April 6, 2016 at 5:28:49 AM EDT

**To:** "Kaiser, Sven-Erik" <[Kaiser.Sven-Erik@epa.gov](mailto:Kaiser.Sven-Erik@epa.gov)>

**Subject:** Another question in the partial RE space

Sven

I'm not sure if this is addressable no matter your response, but wanted your team's take (after section 4 and 14).

You've regulated a number of things under section 6. Other than PCBS which has its own subsection, is it your read that if you wanted to revise regulations for any of those chemicals, you'd need to designate them a high priority and go through a new RE? Or do you read the bill and EPA's general authority as being sufficient to allow you to amend existing regulations to add new hazards, uses, restrictions, etc? Do you also agree that the PCB subsection should provide you with sufficient authority to revise the PCB regs without going through the new process?

Thanks

M

Michal Ilana Freedhoff, Ph.D.  
Director of Oversight and Investigations  
Office of Senator Edward J. Markey (D-MA)

Message

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**From:** Kaiser, Sven-Erik [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=AC78D3704BA94EDBBD0DA970921271FF-SKAISER]  
**Sent:** 12/15/2016 9:13:15 PM  
**BCC:** Jackson, Ryan (Inhofe) [Ryan\_Jackson@inhofe.senate.gov]; 'Bodine, Susan (EPW)' [Susan\_Bodine@epw.senate.gov]; 'Poirier, Bettina (EPW)' [Bettina\_Poirier@epw.senate.gov]; 'Albritton, Jason (EPW)' [Jason\_Albritton@epw.senate.gov]; 'Fox, Thomas (EPW)' [Thomas\_Fox@epw.senate.gov]; Freedhoff, Michal (Markey) [Michal\_Freedhoff@markey.senate.gov]; Black, Jonathan (Tom Udall) [Jonathan\_Black@tomudall.senate.gov]; Rubin Shen, Leah (Coons) [Leah\_RubinShen@coons.senate.gov]; Zipkin, Adam (Booker) [Adam\_Zipkin@booker.senate.gov]; 'Deveny, Adrian (Merkley)' [Adrian\_Deveny@merkley.senate.gov]; Enderle, Emily (Whitehouse) [Emily\_Enderle@whitehouse.senate.gov]; brian\_clifford@barrasso.senate.gov; 'Couri, Jerry' [JerryCouri@mail.house.gov]; 'Cohen, Jacqueline' [jackie.cohen@mail.house.gov]; 'Fruci, Jean' [Jean.Fruci@mail.house.gov]; Strauss, Linda [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=301660ea0f7845769db2210317516451-Strauss, Linda]; brendan.larkin@mail.house.gov; david.rardin@mail.house.gov  
**Subject:** Notification: EPA Announces Plans for a Negotiated Rulemaking on Chemical Data Reporting Requirements for Inorganic Byproducts

EPA announced plans for a Negotiated Rulemaking Committee to consider changes to Chemical Data Reporting (CDR) requirements for inorganic byproducts as required by section 8(a)(6) of TSCA. Specifically, the Committee's objective will be to negotiate the development of a regulation for limiting chemical data reporting requirements for manufacturers of any inorganic byproducts, when such byproducts are subsequently recycled, reused, or reprocessed.

EPA is requesting public comments on procedures for establishing the Committee, stakeholder sectors that would be interested in serving on the Committee, and the issues the committee should address. EPA anticipates that the Committee will be comprised of between 10-25 members representing a range of interested stakeholders. Once the procedures for establishing the Committee are determined, EPA will publish another Federal Register notice seeking members to serve on the committee.

The Agency will take public comment for 30 days, until January 17, 2017. [Read the Federal Register notice.](#)

Please let me know if any questions. Thanks,  
Sven

Sven-Erik Kaiser  
U.S. EPA  
Office of Congressional and Intergovernmental Relations  
1200 Pennsylvania Ave., NW (1305A)  
Washington, DC 20460  
202-566-2753

Message

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**From:** Kaiser, Sven-Erik [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=AC78D3704BA94EDBBD0DA970921271FF-SKAISER]  
**Sent:** 2/28/2016 7:53:47 PM  
**To:** Michal Freedhoff [Michal\_Freedhoff@markey.senate.gov]  
**Subject:** Sen. Markey TSCA TA request- section 6 cost considerations

Michal- availability for a call tomorrow, Mon, Feb 29 at 9 am or 2pm? Thanks,

**From:** "Freedhoff, Michal (Markey)" <[Michal\\_Freedhoff@markey.senate.gov](mailto:Michal_Freedhoff@markey.senate.gov)>  
**Date:** February 27, 2016 at 10:31:43 PM EST  
**To:** "Kaiser, Sven-Erik" <[Kaiser.Sven-Erik@epa.gov](mailto:Kaiser.Sven-Erik@epa.gov)>  
**Subject:** TA - section 6 cost considerations

Sven,

I'm hoping your team can help me come up with some ideas for options on risk management cost considerations. We've talked in the past about an approach incrementally more prescriptive than Senate approach, and one incrementally less burdensome than the House approach.

Out of concern that none of these options will work for all parties, I'm starting to think about other options that might be more of a middle ground in case it is needed. I've scanned through some of your statutes and nothing seems perfectly analogous.

Could we set up a call to discuss again, or alternatively, any ideas you might have would be welcome.

Thanks,  
Michal

Michal Ilana Freedhoff, Ph.D.  
Director of Oversight and Investigations  
Office of Senator Edward J. Markey (D-MA)

Message

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**From:** Kaiser, Sven-Erik [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=AC78D3704BA94EDBBD0DA970921271FF-SKAISER]  
**Sent:** 4/20/2016 9:11:40 PM  
**To:** Freedhoff, Michal (Markey) [Michal\_Freedhoff@markey.senate.gov]  
**Subject:** Re: Sen. Markey TSCA TA Request on the end of section 26

Just sent- what's next?

On Apr 20, 2016, at 5:08 PM, Freedhoff, Michal (Markey) <Michal\_Freedhoff@markey.senate.gov> wrote:

Eta?

Michal Ilana Freedhoff, Ph.D.  
Director of Oversight and Investigations  
Office of Senator Edward J. Markey (D-MA)

---

**From:** Kaiser, Sven-Erik  
**Sent:** Wednesday, April 20, 2016 11:41 AM  
**To:** Freedhoff, Michal (Markey)  
**Subject:** Sen. Markey TSCA TA Request on the end of section 26

Michal – got it, checking. Thanks,  
Sven

Sven-Erik Kaiser  
U.S. EPA  
Office of Congressional and Intergovernmental Relations  
1200 Pennsylvania Ave., NW (1305A)  
Washington, DC 20460  
202-566-2753

---

**From:** Freedhoff, Michal (Markey) [mailto:Michal\_Freedhoff@markey.senate.gov]  
**Sent:** Wednesday, April 20, 2016 11:40 AM  
**To:** Kaiser, Sven-Erik <Kaiser.Sven-Erik@epa.gov>  
**Subject:** Fw: This Act at the end of 26

Can you run this trap? Would also apply to the language on 17. Should it go in all of subsection (p)?

Michal Ilana Freedhoff, Ph.D.  
Director of Oversight and Investigations  
Office of Senator Edward J. Markey (D-MA)

---

**From:** Karakitsos, Dimitri (EPW) <Dimitri\_Karakitsos@epw.senate.gov>  
**Sent:** Wednesday, April 20, 2016 11:37 AM  
**To:** Freedhoff, Michal (Markey)  
**Subject:** This Act at the end of 26

Nothing in this Act requires the Administrator to revise or withdraw a completed risk evaluation, determination, or rule solely because the action was completed prior to the development of a policy, procedure, or guidance under the Frank R. Lautenberg Chemical Safety for the 21<sup>st</sup> Century Act.



Message

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**From:** Kaiser, Sven-Erik [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=AC78D3704BA94EDBBD0DA970921271FF-SKAISER]  
**Sent:** 1/26/2016 9:40:35 PM  
**To:** Bastian, Eleanor [Eleanor.Bastian@mail.house.gov]  
**Subject:** Re: Administration Views on TSCA Reform Bills

Eleanor, plow came through last night and freed up the neighborhood. How about you?

Not sure what you mean by sharing the attachment. It went to house and senate committee staff along with key member TSCA staffers. We generally don't circulate congressional letters out of courtesy to the recipients. Thanks, Sven

On Jan 26, 2016, at 3:42 PM, "Bastian, Eleanor" <[Eleanor.Bastian@mail.house.gov](mailto:Eleanor.Bastian@mail.house.gov)> wrote:

Thank you! Can you please share the enclosure/attachment analyzing provisions? Hope you are dug out.

Eleanor

Eleanor E. Bastian  
Legislative Director  
Congresswoman Diana DeGette (CO-01)  
2368 Rayburn House Office Building  
Washington, D.C. 20515  
(202) 225-4431

---

**From:** Kaiser, Sven-Erik [<mailto:Kaiser.Sven-Erik@epa.gov>]  
**Sent:** Wednesday, January 20, 2016 7:15 PM  
**To:** Bastian, Eleanor  
**Subject:** Administration Views on TSCA Reform Bills

Eleanor,  
Please see attached and let me know if any questions. Thanks,  
Sven

Sven-Erik Kaiser  
U.S. EPA  
Office of Congressional and Intergovernmental Relations  
1200 Pennsylvania Ave., NW (1305A)  
Washington, DC 20460  
202-566-2753

Message

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**From:** Kaiser, Sven-Erik [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=AC78D3704BA94EDBBD0DA970921271FF-SKAISER]  
**Sent:** 4/3/2016 6:49:47 PM  
**To:** Freedhoff, Michal (Markey) [Michal\_Freedhoff@markey.senate.gov]  
**CC:** Black, Jonathan (Tom Udall) [Jonathan\_Black@tomudall.senate.gov]; Deveny, Adrian (Merkley) [Adrian\_Deveny@merkley.senate.gov]  
**Subject:** Re: Sen. Markey TSCA TA request on PFOA SNUR

Got it- checking

On Apr 3, 2016, at 2:46 PM, Freedhoff, Michal (Markey) <[Michal\\_Freedhoff@markey.senate.gov](mailto:Michal_Freedhoff@markey.senate.gov)> wrote:

I am assuming that if LCPFAC chemicals are similar to PFOA, that their uses in articles (even if there are no ongoing uses) might also be reasonably foreseen by epa to be similar - non-stick cookware, coatings for medical products, coatings for floors, clothing, paper boxes/bags used for food, etc. Given the obvious and numerous manners in which EPA could find that there is a "reasonable potential for exposure to the chemical substance" through an article or category of articles, does EPA believe the article consideration language in senate 5 could impede it's development of this SNUR? I understand the language provides a litigation pathway for those who might not like what you do, but does it provide a barrier to what you might actually be able to TRY to do?

Thx

Michal Ilana Freedhoff, Ph.D.  
Director of Oversight and Investigations  
Office of Senator Edward J. Markey (D-MA)

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**From:** Kaiser, Sven-Erik  
**Sent:** Sunday, April 3, 2016 2:19 PM  
**To:** Freedhoff, Michal (Markey); Black, Jonathan (Tom Udall); Deveny, Adrian (Merkley)  
**Subject:** Sen. Markey TSCA TA request on PFOA SNUR

Michal,

This responds to the TA request on PFOA. Please let me know if any questions. Thanks,  
Sven

**Is there a PFOA SNUR in the works that relates to articles?**

Not PFOA per se, but for related chemicals, yes. In January 2015 EPA proposed a SNUR for long-chain perfluoroalkyl carboxylate (LCPFAC) chemical substances that would designate as a significant new use manufacturing (including importing) or processing of an identified subset of LCPFAC chemical substances for any use that will not be ongoing after December 31, 2015, and all other LCPFAC chemicals substances for which there are currently no ongoing uses. For this SNUR, EPA is also proposing to make inapplicable the exemption for persons who import LCPFAC chemical substances as part of articles.

**I thought PFOA was grandfathered onto the inventory?**

Yes, PFOA was included on the original TSCA Inventory.

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**From:** "Freedhoff, Michal (Markey)" <[Michal\\_Freedhoff@markey.senate.gov](mailto:Michal_Freedhoff@markey.senate.gov)>

**Date:** March 29, 2016 at 3:29:26 PM EDT

**To:** "Kaiser, Sven-Erik" <[Kaiser.Sven-Erik@epa.gov](mailto:Kaiser.Sven-Erik@epa.gov)>

**Cc:** "Black, Jonathan (Tom Udall)" <[Jonathan\\_Black@tomudall.senate.gov](mailto:Jonathan_Black@tomudall.senate.gov)>, "Deveny, Adrian (Merkley)" <[Adrian\\_Deveny@merkley.senate.gov](mailto:Adrian_Deveny@merkley.senate.gov)>

**Subject:** PFOA SNUR?

Sven

Is there a PFOA SNUR in the works that relates to articles? I thought PFOA was grandfathered onto the inventory?

Thx

M

Michal Ilana Freedhoff, Ph.D.

Director of Oversight and Investigations

Office of Senator Edward J. Markey (D-MA)

Message

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**From:** Kaiser, Sven-Erik [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=AC78D3704BA94EDBBD0DA970921271FF-SKAISER]  
**Sent:** 4/17/2016 1:19:32 AM  
**To:** Freedhoff, Michal (Markey) [Michal\_Freedhoff@markey.senate.gov]  
**Subject:** Sen. Markey TSCA TA Re: one more try on nomenclature

Michal- this TA responds to the "one more try" on nomenclature. This looks fine - better in fact.

This TA only responds to changes since the last version at the time we were reviewing. All previously offered TA is still germane to the extent the provision has not changed since the TA was offered. The technical assistance does not necessarily represent the policy positions of the agency and the administration on the bill, the draft language and the comments.

Please let me know if any questions. Thanks,  
Sven

Sven-Erik Kaiser

U.S. EPA

Office of Congressional and Intergovernmental Relations

1200 Pennsylvania Ave., NW (1305A)

Washington, DC 20460

202-566-2753

On Apr 16, 2016, at 8:50 PM, Freedhoff, Michal (Markey) <[Michal\\_Freedhoff@markey.senate.gov](mailto:Michal_Freedhoff@markey.senate.gov)> wrote:

Thanks – minor (hopefully) revisions from last one.  
<04-16-16v2Markey TSCA TA Nomenclature 8 45PM.docx>

Message

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**From:** Kaiser, Sven-Erik [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=AC78D3704BA94EDBBD0DA970921271FF-SKAISER]  
**Sent:** 4/9/2016 8:09:09 PM  
**To:** 'Freedhoff, Michal (Markey)' [Michal\_Freedhoff@markey.senate.gov]  
**Subject:** Sen. Markey TSCA TA on revised House section 6  
**Attachments:** Markey.TSCA TA.section 6.4.9.16.docx

Michal,

This TA responds to the request on the revised House section 6.

This TA only responds to changes since the last version at the time we were reviewing. All previously offered TA is still germane to the extent the provision has not changed since the TA was offered. The technical assistance does not necessarily represent the policy positions of the agency and the administration on the bill, the draft language and the comments.

Please let me know if any additional questions. Thanks,  
Sven

Sven-Erik Kaiser  
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**From:** Freedhoff, Michal (Markey) [mailto:Michal\_Freedhoff@markey.senate.gov]  
**Sent:** Saturday, April 09, 2016 11:55 AM  
**To:** Kaiser, Sven-Erik <Kaiser.Sven-Erik@epa.gov>  
**Subject:** 6HOUSE Rev 4-8-16.doc

*This language is provided by EPA as technical assistance in response to a congressional request. The technical assistance is intended for use only by the requester. The technical assistance does not necessarily represent the policy positions of the agency and the administration on the bill, the draft language and the comments.*

SEC. 14. CONFIDENTIAL INFORMATION DISCLOSURE OF DATA.

~~x-refs not all conformed pending review of text~~

(a) IN GENERAL.—Except as provided in ~~by sub~~ this section (b), the Administrator shall not disclose any information that is exempt from disclosure pursuant to subsection (a) of section 552 of title 5, United States Code, by reason of subsection (b)(4) of that section—

(1) that is reported to, or otherwise obtained by, the Administrator ~~(or any representative of the Administrator)~~ under this Act, which is exempt from disclosure pursuant to subsection (a) of section 552 of title 5, United States Code, by reason of subsection (b)(4) of such section, shall, notwithstanding the provisions of any other section of this Act, not be disclosed by the Administrator or by any officer or employee of the United States, except that such information—; and

~~(2) for which the requirements of subsection (c) are met.~~

(b) Information Not Protected From Disclosure.—

(1) DATA FROM HEALTH AND SAFETY STUDIES.— Subsections (a) does not prohibit the disclosure of

(A) any health and safety study which is submitted under this Act with respect to—

(i) any chemical substance or mixture which, on the date on which such study is to be disclosed has been offered for commercial distribution, or  
(ii) any chemical substance or mixture for which testing is required under section 4 or for which notification is required under section 5, and

(B) any data reported to, or otherwise obtained by, the Administrator from a health and safety study which relates to a chemical substance or mixture described in clause (i) or (ii) of subparagraph (A).

This paragraph does not authorize the release of any data which discloses processes used in the manufacturing or processing of a chemical substance or mixture or, in the case of a mixture, the release of data disclosing the portion of the mixture comprised by any of the chemical substances in the mixture.

(2) OTHER INFORMATION NOT PROTECTED FROM

DISCLOSURE.— Subsection (a) does not prohibit the disclosure of ~~The following information is not protected from disclosure under this section:~~

~~(A) For information submitted after the date of enactment of the Frank R. Lautenberg Chemical Safety for the 21st Century Act, the specific identity of a chemical substance as of the date on which the chemical substance is first offered for commercial distribution, if the person submitting the information does not meet the requirements of subsection (d);~~

~~(B)(A) A risk evaluation conducted under section 6.~~

~~(C)(B) Any general information describing the manufacturing volumes, expressed as specific aggregated volumes or, if the Administrator determines that disclosure of specific aggregated volumes would reveal confidential information, expressed in ranges.~~

~~(D)(C) A general description of a process used in the manufacture or processing and industrial, commercial, or consumer functions and uses of a chemical substance, mixture, or article containing a chemical substance or mixture, including information specific to an industry or industry sector that customarily would be shared with the general public or within an industry or industry sector.~~

*This language is provided by EPA as technical assistance in response to a congressional request. The technical assistance is intended for use only by the requester. The technical assistance does not necessarily represent the policy positions of the agency and the administration on the bill, the draft language and the comments.*

(3) MIXED CONFIDENTIAL AND NONCONFIDENTIAL INFORMATION.—Any information that is eligible for protection under this section, that is not information described in subsections (b)(1) or (b)(2) or information required to be disclosed through subsection (b)(4), and is submitted with or contained in information described in this subsection shall be protected from disclosure, if the submitter complies with subsection (c), subject to the condition that information in the submission that is not eligible for protection against disclosure shall be disclosed.

(4) BANS AND PHASE-OUTS

(A) Complete Bans or Phase-outs.—If the Administrator promulgates a rule pursuant to section 6(a) that establishes a ban or phase-out for all conditions of use of the manufacture, processing, or distribution in commerce of a chemical substance, the protection from disclosure of any information under this section with respect to the chemical substance shall be presumed to no longer apply, subject to subsection (gf)(1)(E) and subparagraphs (C) and (D).

(B) Partial Bans or Phase-outs.—If the Administrator promulgates a rule pursuant to section 6(a) that establishes a partial ban or phase-out of the manufacture, processing, or distribution in commerce of a chemical substance, the protection from disclosure of any information under this section with respect to the chemical substance shall be presumed to no longer apply, subject to subsection (gf)(1)(E) and subparagraphs (C) and (D).

(C)(i) Subparagraphs (A) and (B) shall only apply—

(aa) where a specific use of the chemical— substance is subject to an exemption pursuant to section 6(f), to the information that relates solely to any uses of the chemical substance subject to the ban or phaseout for which the exemption does not apply; and

(bb) where there is manufacture, processing, or distribution in commerce of the chemical substance that meets the conditions of section 12(a)(1), to the information that relates solely to any other manufacturing, processing, or distribution in commerce of the chemical substance, unless the Administrator makes the determination in section 12(a)(2).

(ii) Subparagraph (B) shall only apply to the information about the chemical substance that relates solely to the conditions of use for which the ban or phase-out is established.

(D) REQUEST FOR NONDISCLOSURE.—

—A manufacturer or processor of a chemical substance subject to a ban or phase-out may submit to the Administrator, within 30 days of receiving a notification under subsection (gf)(2)(A), a request describing why the person believes that some or all of the information should not be disclosed or that its disclosure should be delayed, and such request shall be reviewed by the Administrator under subsection (gf)(1)(E).

(5) CERTAIN REQUESTS.—If a request is made to the Administrator under section 552(a) of title 5, United States Code, for information that is subject to disclosure under this subsection, the Administrator may not deny the request on the basis of section 552(b)(4) of title 5, United States Code.